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21 Shopping Center, LLC, the Herman Kishner Trust  
22 d/b/a Maryland Square Shopping Center,  
23 Irwin Kishner, Jerry Engel, and Bank of America,  
24 as Trustees for The Herman Kishner Trust

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 PETER J. VOGGENTHALER; et. al.  
16 Plaintiffs,

17 vs.  
18 MARYLAND SQUARE, LLC; et. al.  
19 Defendants.

20 AND RELATED CROSS AND THIRD  
21 PARTY CLAIMS

22 STATE OF NEVADA, DEPT. OF  
23 CONSERVATION AND NATURAL  
24 RESOURCES, et. al.

25 Plaintiff,  
26 vs.  
27 MARYLAND SQUARE SHOPPING  
28 CENTER, LLC, et. al.  
AND RELATED THIRD PARTY CLAIMS

Case No.: 2:08-cv-01618-RCJ-(GWF)

**STIPULATION BETWEEN  
STATE OF NEVADA, DIVISION OF  
ENVIRONMENTAL PROTECTION, AND  
THE CO-TRUSTEES OF THE HERMAN  
KISHNER TRUST AND  
(PROPOSED) ORDER**

CONSOLIDATED WITH:

Case No.: 3:09-cv-231-RCJ-(GWF)

29 The Nevada Division of Environmental Protection (“NDEP”) and Irwin Kishner,  
30 Jerry Engel and Bank of America, N.A., as Co-Trustees of the Herman Kishner Trust (“Co-  
31 Trustees”), hereby stipulate as follows:

## RECITALS

WHEREAS on May 4, 2009, the Nevada Division of Environmental Protection (“NDEP”) filed a complaint under CERCLA and state law for cost recovery, declaratory relief, and injunctive relief against the Co-Trustees in their representative capacity, among others, which complaint was consolidated with the homeowner plaintiffs’ Federal Action; and

WHEREAS on May 17, 2012, the Court issued Its ORDER Granting in Part and Denying in part Motion for Summary Judgment by NDEP (Docket #937); and

WHEREAS, on June 5, 2012, NDEP thereafter filed a Motion for Attorney's Fees and Related Costs ("MAF") (Docket #938) against, among others, Irwin Kishner, Jerry Engel and Bank of America, N.A., Co-Trustees of the Herman Kishner Trust; and

WHEREAS, thereafter, Kishner filed its Response to NDEP's Motion (Docket #949) and NDEP filed its Reply in Support thereof (Docket #954); and

WHEREAS even as the matter is submitted for the Court's determination of the sum of the judgment, the parties have extensively met and further conferred to resolve the dispute, including NDEP's claim for Attorney's Fees and Related Costs and other terms and conditions of the pending judgment; and

WHEREAS NDEP and the Co-Trustees of the Herman Kishner Trust believe that they are currently in the process of resolving NDEP's claims for Attorney's Fees and Related Costs, as well as several related issues; and

WHEREAS an agreement has not yet been reached, but both parties have conducted considerable due diligence and reviews of the matters, and the Parties remain optimistic a resolution will soon be reached; and

WHEREAS the parties believe the settlement negotiations will be furthered and judicial economy will be promoted if the Court refrains from issuing an Order ruling on NDEP's MAE until after November 2, 2012, or as the Parties may further report to the Court

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## STIPULATION

IRWIN KISHNER, JERRY ENGEL and BANK OF AMERICA, N.A. (“Co-Trustees”), Co-Trustees of the HERMAN KISHNER TRUST (“Trust”), by and through their counsel of record, the law firm of DONGELL LAWRENCE FINNEY, LLP, and the NEVADA DIVISION OF ENVIRONMENTAL PROTECTION (“NDEP”), by and through its counsel of record, the NEVADA ATTORNEY GENERAL’S OFFICE (“AG”) (collectively, the “Parties”) hereby respectfully jointly request that the Court not issue an Order ruling on NDEP’s Motion for Attorney’s Fees and Related Costs prior to November 2, 2012.

If the matter of the amount of the judgment and the terms thereof has been agreed to by the Parties prior to November 2, 2012, the parties will promptly inform the Court. If other conditions preceding the stipulation to the agreement of the amount and terms of the agreement may preclude a final settlement by, November 2, 2012, the Parties will also report the status of settlement negotiations to the Court by November 2, 2012.

## IT IS SO STIPULATED.

DATED: October 8, 2012

DONGELLI LAWRENCE FINNEY LLP

By: /s/Thomas F. Vandenburg

Thomas F. Vandenburg

Thomas P. Vandenburg  
Attorneys for Defendants Maryland Square  
Shopping Center, LLC, the Herman Kishner Trust  
dba Maryland Square Shopping Center, Irwin  
Kishner, Jerry Engel, and Bank of America, as  
Trustees for The Herman Kishner Trust

DATED: October 8, 2012

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By: /s/Jasmine K. Mehta

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Environmental Protection

## ORDER

IT IS SO ORDERED.

DATED: October, \_\_\_, 2012.

By: \_\_\_\_\_ U. S. DISTRICT/MAGISTRATE JUDGE